

BEST PRACTICES FOR CRAFT & VISUAL ARTISTS IN ALBERTA

NEGOTIATIONS, AGREEMENTS & CONTRACTS

OVERVIEW

This document sets out recommended standards for professional artists. The guidelines serve as a model for practical and ethical practices facilitating fair and equitable dealings between creators and partners, by ensuring appropriate negotiations, agreements and contracts.

Many activities, not creative in themselves, are necessary for artists. This is especially true once your work leaves the studio. Examples of such activities include exhibiting, negotiating reproductions of images, selling, being commissioned, and paying taxes. You may find such activities provide you with varying experiences of satisfaction or distress.

Use of your art by some else may not work out favourably and you may then react emotionally, out of feelings of pressure or fear. Conversely, if you have thought in advance of your role and rights as a creator, you may instead be able to take appropriate steps to see that your art work is used in the way that seems most appropriate to you.

Negotiations should occur whenever you discuss your work with a potential user. Negotiation is a process of coming to an agreement with a user or purchaser of your art or services, or with someone else who has possible input into your artistic career. It is not necessarily an adversarial process.

Basic principles should apply when you, the artist, are considering the use of your work. It is important to remember that you are the one who has the right to decide what happens to your art. Gather all the information you will need to enable you to make decisions about use of your work, from a basis of well informed knowledge.

CARFAC believes that the artist is the best spokesperson for their work. However, you need enough information about artists' rights and responsibilities to be able to direct your own career. CARFAC works with users of art to ensure fair treatment, and works with artists to encourage self-determination.

1 NEGOTIATION RIGHTS

- 1.1 In negotiations, you have rights. These include:
- 1.2 The right to state what you want and expect.
- 1.3 The right to hear the other party's requests and expectations.
- 1.4 The right to ask for clarification at any point.
- 1.5 The right to refuse or accept any request. Negotiations may or may not proceed further. An agreement satisfactory to both parties may or may not be concluded.
- 1.6 The right to compromise, if it seems acceptable to you.
- 1.7 The right to decide to conclude with either agreement or disagreement.
- 1.8 The right to get professional assistance, perhaps from a lawyer, a financial expert, CARFAC, or any other appropriate party.
- 1.9 Acting on your aforementioned rights can help prevent negotiations fail or stall. Negotiations fail or stall when you are unable to accept terms offered by potential user of your art, the user is unwilling to change their terms, or accept your terms. You may find at that point that you are under pressure to reconsider or rescind. Most artists have been or will be in this situation at some time.

2 PRESSURE SITUATIONS

- 2.1 In some situations you may feel pressure. Occasions could include:
- 2.2 Your participation in an exhibition.
- 2.3 Your participation in an art auction.
- 2.4 Use of your work in association with a campaign or product.
- 2.5 Use of your work as a commodity.
- 2.6 A request to assign all or part of your copyright.
- 2.7 A request to pay a fee or commission, whether or not a service has been rendered to you.
- 2.8 A demand upon you to agree to all terms of a contract rather than some or none.

3 PRESSURE APPLIED

- 3.1 There are many ways that pressure can be put on an artist. Among them are:
- 3.2 Friendly persuasion, for example "It would be such a good idea for you to donate some work to this art auction. A lot of people will see it, and it will be good exposure for you."
- 3.3 Assuming that your needs and those of a user of your work are the same. For example "I really thought a lot more artists would be interested in contributing. This won't look very good. I'm only asking you for one painting. Are you sure you can't take part?"
- 3.4 Moral pressure, for example "We really need you to donate some work. It's such a good cause, and if we don't have your participation we won't do as well, and it's for the children."
- 3.5 Statements that you are being unreasonable. For example, "All the other artists are doing it, and some of them are a lot better known than you. I don't see why you're the only one who won't."
- 3.6 Possible loss of a sale or exhibition opportunity.
- 3.7 Threats, for example "If you don't do what I want, you will regret it..."

4 PRESSURE RESISTED

- 4.1 If you are under pressure for any reason with regard to your art, remember that you have rights. These rights are the same whether the pressure comes from a gallery, a curator, a commissioner, or any other user. To resist pressure as an artist consider the following rights:
- 4.2 The right to understand what use of the artwork is being proposed.
- 4.3 The right to have your art used in ways you find appropriate.
- 4.4 The right to state a point of view.
- 4.5 The right to propose alternatives if you think there are some.
- 4.6 The right to terminate the discussion, either temporarily or permanently.
- 4.7 The right to say no, even though you understand that the pressure may result in consequences or even threats
- 4.8 The right to say yes, even if under better circumstances you would prefer not to.
- 4.9 The right to professional assistance.

5 GETTING ASSISTANCE

- 5.1 CARFAC Alberta offers periodic workshops and professional development programs that provide information and assistance to artists on legal and financial matters. These are available to members without charge. Your concerns may include use of work, contracts, copyright, legal remedies, accounting, income tax and GST. Contact CARFAC Alberta for further information.
- 5.2 Copyright Visual Arts (CARCC) has information on copyright and artists fees. They can also manage and negotiate copyright agreements and licensing for artists who become members. For further information consult the website for Copyright Visual Arts www.carcc.ca.

6 SUMMARY OF NEGOTIATIONS

- 6.1 Non-creative activities related to the use of artwork are necessary for most artists. These activities can lead to pressure situations. Your reactions to pressure may be emotional or rational, depending on the knowledge you have about the situation.
- 6.2 Get the information you need to help you react from a basis of knowledge. No matter what kind of pressure is involved, as an artist you have rights. One of the most important is the right to get professional assistance or representation.
- 6.3 Be prepared for how to address any limitations on the use of your work or activities, or potentially detrimental conduct by users.
- 6.4 Look out for any waiver of moral rights within the meaning of section 14.1 of The Copyright Act (Canada), and in a case between an engager/user and an Aboriginal professional artist, observe the protocols respecting the use of Aboriginal symbols or artifacts or matters of importance to Aboriginal people.
- 6.5 If a written agreement that you enter into includes any rights of an engager/user over any future use of the work or production of an artist, in addition to the elements listed above an agreement must include the following:
 - a) description of the work or production
 - b) description of the process that the professional artist must follow to terminate the contract after the expiration of a specified period
 - c) an expiry date after which, any exclusive right of the engager/user, for any future use of the work or production of the artist, or any right of the engager/user to the work or production, will cease to exist

7 WRITTEN AGREEMENTS AND CONTRACTS

7.1 Formal written agreements increase protection for artists and their intellectual property, between those who engage the services of artists, and the artists themselves. Both parties should read, clearly understand, and sign the agreements.

7.2 Written agreements or contracts are a necessity to:

- a) formalize and record agreements, particularly with regard to work to be undertaken and remuneration
- b) avoid any future conflicts
- c) establish responsibilities and details for insurance coverage requirements and/or related values
- d) record transactions and professional activity
- e) establish an artist's status for tax purposes, e.g. employee or independent contractor
- f) provide information on taxation, any benefits or other payments or withholdings

7.3 The following basic elements should be included in each agreement, written as clearly numbered clauses:

- a) the legal names of the engager and the professional artist
- b) the effective date and duration of the agreement
- c) description of the work, production or enterprise that forms the object of the agreement and all of the terms, duties, responsibilities, expectations and conditions covered by the agreement
- d) all financial considerations due to the professional artist and the terms and conditions of payment, including insurance, the date of the delivery of the work or production or the conduct of the enterprise and the date of the delivery of payment
- e) the frequency with which the engager shall report to the professional artist on the transactions made with respect to the work, production or enterprise that is subject to the agreement and for which financial consideration remains owing after the agreement is entered into

- 7.3
- f) the notice and, if applicable, the compensation required if either the engager or the professional artist terminates the agreement before its completion
 - g) dispute resolution mechanisms

8 FUTURE USE OF WORK

- 8.1 In addition to the clauses listed in 7.3 (above) there should also be clauses covering any future use of work. This includes any transfer of right, e.g. reproduction or copyright, and any grant of licence consented to by the professional artist, including:
- a) the purposes of the transfer of right or grant of licence
 - b) the term of the transfer of right or grant of licence
 - c) the jurisdiction in which the transfer of right or grant of licence applies
 - d) whether any licence granted to an engager is transferable to a third party

9 INDIGENOUS ARTISTS

- 9.1 In the case of indigenous artists there is a duty on engagers to become aware of the protocols that exist with respect to an indigenous artist's customs and traditions.
- 9.2 There is a duty on engagers and indigenous artists to set out the protocols regarding the use of indigenous symbols, or artifacts, or traditional knowledge, or matters of importance to indigenous peoples, and ensure they are in any agreement.

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